

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

BILLY M. SMITH,

:

Plaintiff,

Case No. 3:10-cv-448

-vs-

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

:

MONTGOMERY COUNTY
SHERIFF'S OFFICE, et al.,

Defendants.

**REPORT AND RECOMMENDATIONS ON PLAINTIFF'S MOTION
TO STRIKE**

This case is before the Court on Plaintiff's Motion to Strike (Doc. No. 162) the Defendants' Response (Doc. No. 160) to Plaintiff's Objections (Doc. No. 158) to the Magistrate Judge's Report and Recommendations on the issue remanded by the Sixth Circuit. As a post-judgment motion, the Motion to Strike requires a report and recommendations.

The Report was filed May 17, 2013. Under Fed. R. Civ. P. 72(b), Plaintiff had fourteen days to object¹. Plaintiff filed his Objections on June 3, 2013. Fed. R. Civ. P. 72(b) provides that "[a] party may respond to another party's objections within 14 days after being served with a copy." Defendants filed their Response nine days later on June 12, 2013. Thus it was perfectly proper under the Rules for Defendants to file a response and they did so in a timely manner.

The Motion to Strike should be denied.

June 24, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge

¹ That period was extended three days by Fed. R. Civ. P. 6 because Plaintiff was served with the Report by mail.

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).